

w/ EXHIBITS
A, B, C, D.

ADAM T. WENZKE

PLAINTIFF

v.

Civil Action No. 07-504-***

CORRECTIONAL MEDICAL SERVICES

DR. TADEO, DR. DUDOSIER, MR

ALTON, MR Jim WELCH, DR Smith

BETTY BRADLEY, NECHELLE D.

BUTCHER, AND Stephanie Mowbray

FILED
CLERK U.S. DISTRICT COURT
DISTRICT OF DELAWARE
2008 JAN -3 PM 4:10

PRAYER OF COMPLAINT WITH MOTION IN COMPLAINT —
FOR PRELIMINARY INJUNCTION AND EXPEDITED HEARING

ACCORDINGLY, THE PLAINTIFF SEEKS AN EXPEDITED HEARING BEFORE THE U.S. DISTRICT COURT AS SOON AS PRACTICABLE AND THE ISSUANCE BY THE COURT, FOLLOWING THE HEARING, OF A TEMPORARY AND PERMANENT INJUNCTION TO ENJOIN THE VIOLATION AND SPECIFICALLY ENJOINING THE DEFENDANTS, THIER SUCCESSORS IN OFFICE, AGENTS, EMPLOYEES AND ALL OTHER PERSONS ACTING IN CONCERN AND PARTICIPATION WITH THEM, TO PROVIDE A MEDICALLY APPROPRIATE COURSE OF ACTION. PLAINTIFF ALSO REQUEST THAT HE BE SENT BACK TO THE UROLOGIC SURGICAL ASSOCIATES OF DELAWARE TO SEE FRANCIS J. SHANNE M.D. TO GO OVER ULTRA SOUND RESULTS WHERE MASSES ON TESTICALS WERE DISCOVERED,

TO DISCUSS SURGICALLY REMOVING THE CYSTS OR SOME OTHER FORM OF TREATMENT OTHER THAN TWO TYLENOL TWICE A DAY.

IRREPARABLE INJURY AND DAMAGE WILL RESULT, IF IT HASN'T ALREADY, UNLESS THIS COURT SO ACTS.

WHEREFORE, PLAINTIFF PRAYS:

- 1) THAT THE COURT CONDUCT AN IMMEDIATE EXPEDITED HEARING OR HEARINGS RELATIVE TO THE ISSUES PRESENTED IN THIS COMPLAINT AS SOON AS PRACTICABLE.
- 2) THAT, UPON SUCH EXPEDITED HEARINGS, THE COURT ISSUE A TEMPORARY AND PERMINANT INJUNCTION AS REQUESTED IN COMPLAINT.
- 3) FOR SUCH OTHER RELIEF AS JUSTICE AND EQUITY MAY REQUIRE.

JAN 1, 2008

[DATE]

Adam Wengle

[PLAINTIFF]

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W/EXHIBITS

A, B, C, D

MOTION

- 1) THE PLAINTIFF IS CURRENTLY INCARCERATED AT THE DELAWARE CORRECTIONAL CENTER.
- 2) PLAINTIFF STARTED COMPLAINING ABOUT PAIN IN THE RIGHT TESTICAL IN MAY OF 2004.
- 3) FROM THEN UNTIL PRESENT DAY PLAINTIFF HAS FILED MANY SICK CALLS, MEDICAL GRIEVANCES, AND WROTE NUMEROUS PEOPLE INSIDE THE PRISON FOR HELP. PLAINTIFF ALSO WON THE LAST MEDICAL GRIEVANCE, AND THE APPEAL TO BUREAU CHIEF RICHARD KEARNEY.
(SEE ATT: EXHIBITE A, B, C, D).
- 4) PLAINTIFF WOULD LIKE TO BE SENT BACK TO THE UROLOGIST FRANCIS J. SHANNE M.D. FOR A FOLLOW UP CONSULT FOR FURTHER TREATMENT, OR SURGICALLY REMOVE THEM, OR GOD FORBID I LOSE A TESTICAL.
- 5) PLAINTIFF HAS HAD TWO ULTRA SOUNDS. THE FIRST WAS ON SEPT. 21, 2004. I WAS TOLD EVERYTHING WAS NORMAL. THE JEVER PAIN CONTINUED UNTIL I FINALLY HAD A SECOND ONE DONE ON DEC. 18, 2006 WHICH FRANCIS J. SHANNE M.D. ORDERED FOR ME ON NOV 16, 2006. THE TECHNICIAN WHO PERFORMED

PAGE 4 OF 4
W/EXHIBITS
A, B, C, D

THE ULTRA SOUND INFORMED ME I HAD A MASS ON BOTH TESTICALS NOT JUST THE RIGHT ONE. I WAS DEVASTATED A LITTLE BIT.

6) THE MEDICAL DEPARTMENT KNOWS MY CONDITION, THEY KNOW I'M SUFFERING IN PAIN EVERY DAY OR THEY WOULDN'T BE GIVING ME ASPIRIN TWO TIMES A DAY, BUT ASPIRIN IS NOT TREATMENT FOR MY SITUATION. IN THE BEGINNING IT HELPED OUT A LITTLE, BUT NOW I CAN'T TAKE THE PAIN NO MORE.

7) I'VE BEEN SUFFERING SINCE MAY OF 2004. I NEED THE COURTS HELP IN THIS MATTER. PLEASE!
MEDICAL HAS THE DOCUMENTED PROOF FROM THE ULTRA SOUND AND THEY STILL WILL NOT HELP ME.

THE PLAINTIFF MOVES THE COURT FOR AN EXPEDITED HEARING RELATIVE TO THE ISSUES AND MATTERS PRESENTED IN THIS COMPLAINT.

JAN 1, 2008
[DATE]

Adam W. Longho
[PLAINTIFF]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE SERVED
UPON ALL PERSONS LISTED BELOW A TRUE AND
CORRECT COPY OF COMPLAINT WITH MOTION IN
COMPLAINT - FOR PRELIMINARY INJUNCTION AND
EXPEDITED HEARING WITH EXHIBITS A, B, C, D.

DEPARTMENT OF JUSTICE
CARVEL STATE OFFICE BUILDING
800 N. FRENCH ST.
WILMINGTON, DE 19801

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
844 N. KING ST. (LOCK BOX 18)
WILMINGTON, DE 19801-3570

JAN 1, 2008
[DATE]

Adam Wozniak
[PLAINTIFF]

* COPY *

EXHIBIT A

FORM #585

MEDICAL GRIEVANCE

and 3 other people from the medical staff said all they can do is give me Aspirin for pain.

I insisted that they let ~~FRANCIS~~ look at the ultra sound and we'll go by his recommendation. They didn't want to but they finally agreed.

AT LEAST, THAT'S WHAT THEY TOLD ME "A LIE"

FACILITY: HRVCI
INMATE'S NAME: ADAM WENZKE
HOUSING UNIT: 2-5

DATE SUBMITTED: 9/30/06SBI#: 182595

CASE #: _____

once again they tried to brush me off with we can't do anything except give me Aspirin for pain.

SECTION #1

DATE & TIME OF MEDICAL INCIDENT: 7-7-04 until 9-30-06

TYPE OF MEDICAL PROBLEM:

I've been complaining that I have sharp pains at the top of my right testical for over 2 years. I've been seen numerous times about this but nobody is actually doing any thing about it. One 3/04/06 Dr Tadeo told me she ~~orderd~~ ordered a utru sound ~~after~~ after my exam. That never happened. On 5/10/06 DR. Dorosier examened the problem and put me on Anti biotics for 2 weeks. She said they would call me in 2 weeks and that never happened either. Now Im in pain again and Im tired of being ignored by the medical staff.

GRIEVANT'S SIGNATURE: Adam Wenzke DATE: Sept 30, 2006

ACTION REQUESTED BY GRIEVANT: I would like a 3-D ~~an~~ ultra sound or a MRI by a specialist.

DATE RECEIVED BY MEDICAL UNIT: _____

HEARD 1-11-07
Appealed

NOTE: EMERGENCY MEDICAL CONDITIONS WILL TAKE PRIORITY. OTHERWISE, MEDICAL GRIEVANCES WILL BE ADDRESSED AT THE WEEKLY MEDICAL COMMITTEE MEETING.

1301 E. 12th Street
 WILMINGTON DE, 19809
 Phone No. 302-429-7700

EXHIBIT B

GRIEVANCE REPORT

OFFENDER GRIEVANCE INFORMATION

Offender Name : WENZKE, ADAM T	SBI# : 00182595	Institution : HRYCI
Grievance # : 72003	Grievance Date : 09/30/2006	Category : Individual
Status : Unresolved	Resolution Status :	Resol. Date :
Grievance Type: Health Issue (Medical)	Incident Date : 09/30/2006	Incident Time :
IGC : Moody, Mary	Housing Location : Building 1, East, Floor 1, Pod 2T, Cell 5, Bed A	

OFFENDER GRIEVANCE DETAILS

Description of Complaint: I've been complaining that I have sharp pains at the top of my right testical for over 2 years. I've been seen numerous times about this but nobody is actually doing anything about it. On 3/4/06 Dr. Tadeo told me that she ordered a ultra sound after my exam. That never happened. On 5/10/06 Dr. Dorosier examined the problem and put me on antibiotics for 2 weeks. She said they would call me back in 2 weeks and that never happened either. Now I'm in pain again, and I'm tired of being ignored by the medical staff.

Remedy Requested : I would like a 3d ultra-sound or a MRI by a specialist.

INDIVIDUALS INVOLVED

Type	SBI #	Name
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ADDITIONAL GRIEVANCE INFORMATION

Medical Grievance : YES	Date Received by Medical Unit : 10/09/2006
Investigation Sent : 10/09/2006	Investigation Sent To : Altman, Scott
Grievance Amount :	

ON October 9, 2006 MR Altman came to T-Pod AND ASKED ME why I keep writing the INF. AND Filing grievances. I explained the problem in detail and HE STATED TO ME EVERYBODY'S TESTICALS HURT FROM TIME TO TIME that's just how it is. Also told me TO STOP writing frivolous grievances.

4 DAYS LATER

WAS SEEN October 13, 2006 By Doctor Consley. HE EXAMINED ME AND FINALLY SCHEDULED ME TO SEE A Urologist. THANK GOD (FOUND A SMALL MASS)

1301 E. 12th Street
WILMINGTON DE, 19809
Phone No. 302-429-7700

INFORMAL RESOLUTION

EXIBITE R

OFFENDER GRIEVANCE INFORMATION

Offender Name : WENZKE, ADAM T	SBI# : 00182595	Institution : HRYCI
Grievance # : 72003	Grievance Date : 09/30/2006	Category : Individual
Status : Unresolved	Resolution Status :	Inmate Status :
Grievance Type : Health Issue (Medical)	Incident Date : 09/30/2006	Incident Time :
IGC : Moody, Mary	Housing Location : Building 1, East, Floor 1, Pod 2T, Cell 5, Bed A	

INFORMAL RESOLUTION

Investigator Name : Altman, Scott **Date of Report** 10/09/2006
Investigation Report : Seen 5/23/06; states pain has reoccurred since then without improvement; has not submitted SC slips since; will be scheduled for evaluation on 10/13/06
Reason for Referring:

Offender's Signature: _____

Date : _____

Witness (Officer) : _____

1301 E. 12th Street
WILMINGTON DE, 19809
Phone No. 302-429-7700

EXHIBIT B

GRIEVANCE INFORMATION - IGC

OFFENDER GRIEVANCE INFORMATION

Offender Name : WENZKE, ADAM T	SBI# : 00182595	Institution : HRYCI
Grievance # : 72003	Grievance Date : 09/30/2006	Category : Individual
Status : Unresolved	Resolution Status :	Inmate Status :
Grievance Type: Health Issue (Medical)	Incident Date : 09/30/2006	Incident Time :
IGC : Moody, Mary	Housing Location : Building 1, East, Floor 1, Pod 2T, Cell 5, Bed A	

IGC

Medical Provider:

Date Assigned

Comments:

<input checked="" type="checkbox"/> Forward to MGC	<input type="checkbox"/> Forward to Medical Provider	<input type="checkbox"/> Warden Notified
<input type="checkbox"/> Forward to RGC	Date Forwarded to MGC :	10/10/2006
<input type="checkbox"/> Offender Signature Captured	Date Offender Signed :	

Date: 01/12/2007

EXIBITE B

GRIEVANCE INFORMATION - MGC

OFFENDER GRIEVANCE INFORMATION

Offender Name : WENZKE, ADAM T	SBI# : 00182595	Institution : HRYCI
Grievance # : 72003	Grievance Date : 09/30/2006	Category : Individual
Status : Unresolved	Resolution Status:	Inmate Status :
Grievance Type: Health Issue (Medical)	Incident Date : 09/30/2006	Incident Time :
IGC : Moody, Mary	Housing Location : Building 1, East, Floor 1, Pod 2T, Cell 5, Bed A	

MGC

Date Received : 10/10/2006

Date of Recommendation: 01/11/2007

GRIEVANCE COMMITTEE MEMBERS

Person Type	SBI #	Name	Vote
Staff		Bradley, Betty	Uphold
Staff		Butcher, Nechelle D	Uphold
Staff		Mowbray, Stephanie	Uphold

VOTE COUNT

Uphold : 3

Deny : 0

Abstain : 0

TIE BREAKER

Person Type	SBI #	Name	Vote
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RECOMMENDATION

MGC convened Thursday, 1/11/07

The Committee recommends that the grievance be upheld. I/M Wenzke has been seen by an outside specialist and an ultrasound has been conducted. I/M Wenzke case is being reviewed by the doctor for follow up with the urologist. I/M Wenzke refused to sign, appealed.

1301 E. 12th Street
WILMINGTON DE, 19809
Phone No. 302-429-7700

GRIEVANCE INFORMATION - Appeal

EXHIBIT C

OFFENDER GRIEVANCE INFORMATION

Offender Name : WENZKE, ADAM T	SBI# : 00182595	Institution : HRYCI
Grievance # : 72003	Grievance Date : 09/30/2006	Category : Individual
Status : Unresolved	Resolution Status :	Inmate Status :
Grievance Type: Health Issue (Medical)	Incident Date : 09/30/2006	Incident Time :
IGC : Moody, Mary	Housing Location : Building 1, East, Floor 1, Pod 2T, Cell 5, Bed A	

APPEAL REQUEST

Appeal dated 1/16/06, received in the IGC's Office on 1/17/07:

I'm tired of getting brushed off by the Medical Staff. I've got really severe sharp pains on top of my right testicle. I have also been telling the Medical Dept. this problem for over 2 1/2 years. I would like to see the Urologist I seen before and go over my ultrasound results.

I know I have a cyst on each testicle but the right one has been killing me for years. I think I need better treatment options than HRYCI Medical Department telling me all we can do for you is give you Motrin or Tylenol. I'm in pain 90% of every day. Somebody please do something about this. Thank you for your time. Take care and God Bless!

Signed Adam Wenzke

REMEDY REQUEST

EXIBITE D

DEPARTMENT OF CORRECTION
Bureau of Prisons
245 McKee Road
Dover, Delaware 19904

April 25, 2007

Inmate WENZKE ADAM T
SBI # 00182595
HRYCI Howard R. Young Correctional Institution
WILMINGTON DE, 19809

Dear ADAM WENZKE:

We have reviewed your Grievance Case # 72003 dated 09/30/2006.

Based upon the documentation presented for our review, we uphold your appeal request.

Accordingly, there is no further issue to mediate nor Outside Review necessary as provided by BOP Procedure 4.4 entitled "Inmate Grievance Procedure", Level III appeals.

Sincerely,

Richard Kearney
Bureau Chief

ADAM T. WENZKE
PLAINTIFF

v.

CIVIL ACTION No. 07-504-***

CORRECTIONAL MEDICAL SYSTEMS
DR. TADEO, DR. DOROSIER, MR. ALTON
MR. VIM WELCH, DR. SMITH, BETTY
BRADLEY, NECHELLE D. BUTCHER,
AND STEPHANIE MOWBRAY
DEFENDENTS

FILED
CLERK U.S. DISTRICT COURT
DISTRICT OF DELAWARE
2008 JAN -3 PM 4:

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A
TRO AND PRELIMINARY INJUNCTION

STATEMENT OF CASE:

THIS IS A CIVIL RIGHTS ACTION BROUGHT UNDER 42 U.S.C. § 1983 BY A STATE PRISONER WHO HAS TWO MASSES ON HIS TESTICALS. THE PAIN FROM THESE MASSES ARE SEVERE, Tylenol is only working at 10% for such pain. PLAINTIFF IS PRESENTLY BEING DENIED APPROPRIATE MEDICAL CARE. ALSO, PLAINTIFF SEEKS A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION TO ENSURE THAT HE RECEIVES PROPER MEDICAL CARE.

STATEMENT OF FACTS:

AS STATED IN THE DECLARATION SUBMITTED WITH THIS MOTION, THE PLAINTIFF HAS FILED NUMEROUS SICK CALLS, MEDICAL GRIEVANCES, AND WROTE THE WARDEN AND MANY OTHER PERSONEL AT THE PRISON CONCERNING THIS MATTER. I'VE BEEN COMPLAINING AND SUFFERING SINCE MAY OF 2004. ON SEPT 21, 2004 I RECIEVED MY FIRST ULTRA SOUND. THE DOCTOR WHO EXAMINED THE RESULTS TOLD PRISON OFFICIALS THAT EVERYTHING WAS NORMAL AND NOTHING WAS WRONG. I CONTINUED TO HAVE PAIN AND ALL MEDICAL WOULD DO IS GIVE ME MOTRIN AT FIRST, THEN ~~switch~~ OVER TO TYLENOL. I WROTE MANY MORE SICK CALLS AND MEDICAL GRIEVANCES AND WAS SEEN BY NURSES AND DOCTORS ONLY TO HAVE THEM TELL ME NOTHING WAS WRONG WITH ME.

UNTIL I WAS EXAMINED BY DR CONOLEY ON OCT 13, 2006 WHO INFORMED ME I HAD A MASS ON MY RIGHT TESTICAL. HE IMMEDIATELY SCHEDULED ME TO GO OUT AND SEE A Urologist. ON NOV. 16, 2006 I WAS SENT TO Urologic ~~Center~~ SURGICAL ASSOCIATES OF DELAWARE. I WAS EXAMINED BY FRANCIS J. SHANNON M.D. WHO ALSO FOUND A MASS ON MY RIGHT TESTICAL. HE QUICKLY ORDERED A SECOND ULTRA SOUND AND TOLD ME AFTER I GET IT DONE HE WOULD CALL ME BACK FOR A CONSULT ON THE RESULTS AND TREATMENT OPTIONS. HE ALSO SAID I HAVE A CHANCE OF LOSING MY RIGHT TESTICAL DEPENDING ON HOW BAD THE DAMAGE WAS. I WAS THEN SENT BACK TO PRISON.

STATEMENT OF FACTS CONT.:

ON DEC. 18, 2006 I FINALLY RECEIVED A SECOND ULTRASOUND. THE TECHNICIAN WHO PERFORMED THE ULTRASOUND HAD CHECKED BOTH TESTICLES AND INFORMED ME I HAD A MASS ON BOTH OF THEM. ON JAN 7, 2007 I WROTE A SICK CALL TELLING THEM I WAS IN PAIN AND I WOULD LIKE TO SEE THE RESULTS ON PAPER.

ON JAN 11, 2007 I WAS CALLED TO A MEDICAL GRIEVANCE HEARING WHERE I WAS TOLD THAT THE MASSES WERE CYSTS AND ALL THEY COULD DO WAS GIVE ME MORE TYLENOL AND I COULD SEE ANOTHER PRISON DOCTOR. I INSISTED THAT THEY SEND THE RESULTS TO FRANCIS J. SHANNING M.D. THE UROLOGIST AND AFTER ARGUING FOR 10 OR 15 MINUTES MRS. STEPHANIE MOWBRAY TOLD ME I WILL BE SENT BACK TO THE UROLOGIST. I DIDN'T BELIEVE THEM BECAUSE OF THE LOOKS ON THEIR FACES AND THE WAY THEY ANSWERED ME SO I APPEALED THE HEARING.

ON MARCH 9, 2007 I WAS CALLED TO THE INFIRMARY BY PRISON DR. SMITH. I ASKED HIM WHAT THE SITUATION WAS ABOUT ME CONCERNING THE UROLOGIST? HE LOOKED AT MY FILE AND TOLD ME NOT TO WORRY, THAT HE WOULD SCHEDULE ANOTHER ULTRA-SOUND. I WROTE FOUR MORE LETTERS CONCERNING MY SITUATION UNTIL APRIL 25, 2007 I RECEIVED A LETTER FROM THE BUREAU CHIEF RICHARD KEARNEY STATING HE UPHOLD MY GRIEVANCE APPEAL REQUEST.

STATEMENT OF FACTS CONT:

NOW I WAS SURE I WOULD GET THESE MASSES REMOVED, BUT FROM THAT DATE APRIL 25, 2007 UNTIL AUGUST OF 2007 I WOULD BE IGNORED ALL OVER AGAIN. ON AUGUST 13, 2007 I FILED A §1983 LAW SUIT FORM IN DISTRICT COURT. I CANNOT TAKE THIS KIND OF PAIN AND SUFFERING ANY LONGER.

ON SEPT. 11 2007 MY JOB WAS TAKEN AND MY ABILITY TO EARN 2 1/2 DAYS A MONTH GOOD-TIME WAS TAKEN AND I WAS TRANSFERRED TO DELAWARE CORRECTIONAL CENTER FROM HOWARD R. YOUNG CORR. INST. AND PLACED IN LOCK DOWN STATUS, WITH NO WRITE UP, NO REASONS, AND NO PAPER WORK WHATSOEVER.

I FILED THREE SEPARATE SICK CALLS AND A MEDICAL GRIEVANCE. I WAS NEVER SEEN FOR ANY OF THEM. ON DEC 20, 2007 I WAS CALLED TO THE DR'S OFFICE. DR. DOROSIER EXAMINED MY TESTICALS AND STATED IT FELT LIKE I HAD FLUID IN MY SCROTUM. SHE MENTIONED SOMETHING ABOUT ANOTHER ULTRA-SOUND AND SAID SHE WOULD CALL ME BACK IN 6 WEEKS.

THE DEFENDENTS AGAIST WHOM RELIEF IS SOUGHT ARE, RESPECTIVELY, THE PRISONS MEDICAL PERSONNEL, WHO IS RESPONSIBLE FOR ARRANGING SPECIALIZED MEDICAL CARE THAT CANNOT BE PROVIDED IN THE PRISON, AND THE

STATEMENT OF FACTS CONT:

DEPUTY WARDEN FOR ADMINISTRATION, who is RESPONSIBLE FOR GETTING PRISONERS TO THEIR OUTSIDE MEDICAL SPECIALIST APPOINTMENTS.

ARGUMENT

I. THE PLAINTIFF IS ENTITLED TO A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION.

IN DETERMINING WHETHER A PARTY IS ENTITLED TO A TRO AND A PRELIMINARY INJUNCTION, COURTS GENERALLY CONSIDER SEVERAL FACTORS: WHETHER THE PARTY WILL SUFFER IRREPARABLE INJURY, THE "BALANCE OF HARSHIPS" BETWEEN THE PARTIES, THE LIKELIHOOD OF SUCCESS ON THE MERITS, AND THE PUBLIC INTEREST. EACH OF THESE FACTORS FAVORS THE GRANT OF THIS MOTION.

A. THE PLAINTIFF IS THREATENED WITH IRREPARABLE HARM.

THE PLAINTIFF ALLEGES THAT HE HAS BEEN DENIED CARE FOR A SERIOUS MEDICAL NEED CONTRARY TO A PHYSICIAN'S INSTRUCTION. SUCH CONDUCT BY PRISON OFFICIALS IS A CLEAR VIOLATION OF THE EIGHTH AMENDMENT. ESTELLE V. GAMBLE, 429 U.S. 97, 105, 97 S.Ct. 285 (1976)

(NOTING THAT "INTENTIONALLY INTERFERING WITH THE TREATMENT ONCE PRESCRIBED" IS A FORM OF UNLAWFUL DELIBERATE INDIFFERENCE); SEE ALSO CASES CITED IN SECTION C. OF THIS POINT.

THE PLAINTIFF ALSO ALLEGES THAT HE IS BEING RETALIATED AGAINST ^{BY} SOME OF THE DEFENDENTS AND SECURITY AND THE ADMINISTRATION AT H.R.Y.C.I., WHICH IS DIRECTLY AGAINST 42 U.S.C. § 1983

AS A MATTER OF LAW, THE CONTINUING DEPRIVATION OF CONSTITUTIONAL RIGHTS CONSTITUTES IRREPARABLE HARM. Elrod v. Burns, 427 U.S. 347, 373, 96 S.Ct. 2676 (1976). THIS PRINCIPLE HAS BEEN APPLIED IN PRISON LITIGATION GENERALLY, SEE Newsom v. Norris, 888 F.2d 371, 378 (6th Cir. 1989); Mitchell v. Cuomo, 748 F.2d 804, 806 (2nd Cir. 1984); Albro v. County of Onondaga, N.Y., 627 F. Supp. 1280, 1287 (N.D.N.Y. 1986); Williams v. Lane, 646 F. Supp. 1379, 1409 (N.D. IL 1986); AFF'D, 851 F.2d 867 (7th Cir. 1988), CERT. denied, 109 S.Ct. 879 (1989), AND SPECIFICALLY IN PRISON MEDICAL CARE CASES, Phillips v. Michigan Dept. of Corrections, 731 F. Supp. 792, 801 (W.D. Mich. 1990), AFF'D, 932 F.2d 969 (6th Cir. 1991).

IN ADDITION, THE PLAINTIFF IS THREATENED WITH IRREPARABLE HARM BECAUSE OF THE NATURE OF THIS PAINFUL INJURY, A CYST ON BOTH TESTICALS. SINCE THE CYST ON THE RIGHT TESTICAL

IS ON THE PART THAT ACTUALLY MAKES THE SPERM, IT LOOKS TO ME THAT IT IS SMALLER THAN THE LEFT ONE BECAUSE THE RIGHT TESTICAL IS THE ONE THAT'S BEEN HURTING FOR A LONG TIME. IF HE DOES NOT RECIEVE THE PROPER TREATMENT OR OPERATION SOON, AND IT MAY ALREADY BE TO LATE, HE MAY LOSE HIS TESTICAL.

B. THE BALANCE OF HARDSHIPS FAVOR THE PLAINTIFF.

IN DECIDING WHETHER TO GRANT TRO'S AND PRELIMINARY INJUNCTIONS, COURTS ASK WHETHER THE SUFFERING OF THE MOVING PARTY IF THE MOTION ~~IS~~ DENIED WILL OUTWEIGH THE SUFFERING OF THE NON-MOVING PARTY IF THE MOTION IS GRANTED. SEE, e.g., MITCHELL V. CUOMO, 748 F.2d 804, 808 (2nd Cir. 1984) (HOLDING THAT DANGERS POSED BY PRISON OVER CROWDING OUTWEIGHED STATE'S FINANCIAL AND ADMINISTRATIVE CONCERNS) DURAN V. ANAYA, 642 F. Supp. 516, 527 (D.N.M. 1986) (HOLDING THAT PRISONER'S INTEREST IN SAFETY AND MEDICAL CARE OUTWEIGHED STATE'S INTEREST IN SAVING MONEY BY CUTTING STAFF).

IN THIS CASE, THE PRESENT SUFFERING OF THE PLAINTIFF AND HIS POTENTIAL SUFFERING IF HE PERMANENTLY LOSES ONE OR BOTH TESTICALS ARE ENORMAS. THE "SUFFERING" THE DEFENDENTS WILL EXPERIANCE IF THE COURT GRANTS THE ORDER WILL CONSIST OF TAKING THE PLAINTIFF BACK TO THE Urologist "FRANCIS J. Shanne, M.D" AND CARRYING OUT THE DOCTORS

ORDERS -- SOMETHING THAT THE DEFENDENTS DO, AND ARE OBLIGATED TO DO, FOR MEMBERS OF THE PRISON POPULATION ON A DAILY BASIS. THE DEFENDENTS' HARDSHIPS AMOUNT TO NO MORE THAN BUSINESS AS USUAL.

C. THE PLAINTIFF IS LIKELY TO SUCCEED ON MERITS.

THE PLAINTIFF HAS A GREAT LIKELIHOOD OF SUCCESS ON THE MERITS. WHAT DEFENDANTS HAVE DONE -- "INTENTIONALLY INTERFERING WITH (MEDICAL) TREATMENT ONCE PRESCRIBED" -- WAS SPECIFICALLY SINGLED OUT BY THE SUPREME COURT AS AN EXAMPLE OF UNCONSTITUTIONAL "DELIBERATE INDIFFERENCE" TO PRISONERS MEDICAL NEEDS. Estelle v. Gamble, 429 U.S. 97, 105, 97 S.Ct. 285 (1976). MANY OTHER COURTS HELD THAT FAILURE TO CARRY OUT PHYSICIANS ORDERS IS UNCONSTITUTIONAL. SEE, E.G., ASWEGAN V. BRUHL, 965 F.2d 676, 677-78 (8th Cir. 1992) (REPEATED FAILURES TO PROVIDE MEDICATIONS TIMELY); Hill v. MARSHALL, 962 F.2d 1209, 1213-14 (6th Cir. 1992) (FAILURE TO PROVIDE TUBERCULOSIS MEDICATION) CERT. DENIED, ____ U.S. ____ (1993); DACE V. SOLEM, 858 F.2d 385, 387-88 (8th Cir. 1988) (FAILURE OF PRISON DOCTORS TO CARRY OUT SURGERY SCHEDULED BEFORE PLAINTIFF'S INCARCERATION); WASHINGTON V. DUGGER, 860 F.2d 1018, 1021 (11th Cir. 1988) (FAILURE TO RETURN PATIENT TO VA HOSPITAL FOR TREATMENT FOR Agent Orange); LAFALT V. SMITH, 834 F.2d 389, 393-94 (4th Cir. 1987) (FAILURE TO PROVIDE REHABILITATION THERAPY RECOMMENDED BY ~~ORTHOPEDIC~~ SPECIALIST).

D. THE RELIEF SOUGHT WILL SERVE PUBLIC INTEREST.

IN THIS CASE, THE GRANT OF RELIEF WILL SERVE THE PUBLIC INTEREST BECAUSE IT IS ALWAYS IN THE PUBLIC INTEREST FOR PRISON OFFICIALS TO OBEY THE LAW. DURAN V ANAYA, 642 F. Supp. 510, 527 (D.N.M. 1986) ("RESPECT FOR LAW, PARTICULARLY BY OFFICIALS RESPONSIBLE FOR THE ADMINISTRATION OF THE STATE'S CORRECTIONAL SYSTEM, IS IN ITSELF A MATTER OF THE HIGHEST PUBLIC INTEREST"); SEE ALSO, LLEWELYN V. OAKLAND COUNTY PROSECUTOR'S OFFICE, 402 F. Supp. 1379, 1393 (E.D. Mich. 1975) ("THE CONSTITUTION IS THE ULTIMATE EXPRESSION OF THE PUBLIC INTEREST").

II. THE PLAINTIFF SHOULD NOT BE REQUIRED TO POST SECURITY.

USUALLY A LITIGANT WHO OBTAINS INTERIM INJUNCTION RELIEF IS ASKED TO POST SECURITY. RULE 65(C), FED. R. CIV. P. HOWEVER, THE PLAINTIFF IS AN INDIGENT PRISONER AND IS UNABLE TO POST SECURITY. THE COURT HAS DISCRETION TO EXCUSE AN IMPOVERISHED LITIGANT FROM POSTING SECURITY. ORANTES-HERNANDEZ V. SMITH, 541 F. Supp. 351, 385 n. 30 (C.D. Cal. 1982); J.L. V. PARHAM, 412 F. Supp. 112, 140 (D. Ga. 1976), REV' ON OTHER GROUNDS, 442 U.S. 584, 99 S. Ct. 2493 (1979). IN VIEW OF THE SERIOUS MEDICAL DANGER CONFRONTING THE PLAINTIFF, THE COURT SHOULD GRANT THE RELIEF REQUESTED

WITH OUT REQUIRING THE POSTING OF SECURITY.

CONCLUSION

FOR THE FOREGOING REASONS, THE COURT SHOULD
GRANT THE MOTION IN ITS ENTIRETY.

JAN 1, 2008

DATE:

Adam Wenzke

NAME:

DELAWARE CORR. CENTER

1181 PADDOCK ROAD

SMYRNA, DE 19977

ADDRESS:

CERTIFICATION OF SERVICE

I HEREBY CERTIFY THAT I HAVE SERVED UPON ALL PERSONS LISTED BELOW A TRUE AND CORRECT COPY OF PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A TRO AND PRELIMINARY INJUNCTION, IN THE ABOVE CAPTIONED MATTER THIS DAY BY REGULAR MAIL.

DEPARTMENT OF JUSTICE
CARVEL STATE OFFICE Building
820 N. FRENCH STREET
WILMINGTON, DE 19801

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
844 N. KING STREET, Lockbox 18
WILMINGTON, DE 19801-3570

JAN 1, 2008

DATE:

Adam T. Wenzke

NAME:

ADAM T. WENZKE
PLAINTIFF,

v.

CIVIL ACTION No. 07-504-***

CORRECTIONAL MEDICAL SYSTEMS
DR. TADEO, DR. DOROSIER, MR.
ALTON, MR. Jim Welch, DR. SMITH
BETTY BRADLEY, NEONELLE D.
BLUTCHER, AND STEPHANIE MOWBRAY
DEFENDENTS

FILED
CLERK U.S. DISTRICT COURT
DISTRICT OF DELAWARE
2008 JAN -3 PM 4:10

DECLARATION IN SUPPORT OF PLAINTIFFS MOTION
FOR A TEMPORARY RESTRAINING ORDER AND A
PRELIMINARY INJUNCTION

ADAM T. WENZKE DECLARES UNDER PENALTY OF PERJURY:

- 1) I AM THE PLAINTIFF IN THIS CASE. I MAKE THIS
DECLARATION IN SUPPORT OF MY MOTION FOR A TEMPORARY
RESTRAINING ORDER AND A PRELIMINARY INJUNCTION TO
ENSURE THAT I RECEIVE NECESSARY MEDICAL CARE, AND
THAT I AM PROTECTED FROM THE RETALIATORY ACTS OF
THE DEFENDANTS.

- 2) AS SET FORTH IN THE COMPLAINT IN THIS CASE, I HAVE BEEN BEGGING THE MEDICAL DEPARTMENT TO PLEASE DO SOMETHING ABOUT THE SEVERE PAIN I'M HAVING IN MY RIGHT TESTICAL OTHER THAN THE MOTRIN I WAS RECEIVING.
- 3) AFTER BEING SEEN BY A NURSE AND TWO DIFFERENT DOCTORS I WAS PUT ON ANTI-BIOTICS FOR TWO WEEKS AND WAS STILL TOLD THERE'S NOTHING WRONG.
- 4) I FILED NUMEROUS SICK CALL SLIPS AND A MEDICAL GRIEVANCE, THEN I WAS FINALLY SCHEDULED FOR A ULTRA-SOUND, WHICH TOOK PLACE ON SEPT. 21, 2004
- 5) A MEDICAL GRIEVANCE INVESTIGATOR WHOSE NAME WAS GINA WOLKEN CAME TO SEE ME ON DEC. 29, 2004 AND TOLD ME THE DOCTOR WHO EXAMINED THE ULTRA-SOUND RESULTS SAID THERE IS NOTHING WRONG - EVERYTHING IS NORMAL. I TOLD HER I WAS STILL IN SERIOUS PAIN AND SOMETHING WAS WRONG. SHE LOOKED IN HER PAPER WORK AND TOLD ME I WAS ON THE LIST TO SEE ANOTHER PRISON DOCTOR.
- 6) I WAITED TWO MONTHS TO SEE THAT DOCTOR, BUT THAT NEVER HAPPENED. I WAS SOMEHOW THEN TRANSFERRED FROM THE DELAWARE CORRECTIONAL CENTER TO HOWARD R. YOUNG CORRECTIONAL INSTITUTE ON FEB 24, 2005.

- 7) I JUST DEALT WITH THE EMBARRASSING PAIN FOR THE NEXT five months until I COULDN'T TAKE THE SUFFERING ANY MORE, SO I STARTED SENDING IN SICK CALLS AND MEDICAL GRIEVANCES FROM JULY 25, 2005 UNTIL I WAS FINALLY SEEN BY A DOCTOR ON MARCH 4, 2006. SHE EXAMINED MY RIGHT TESTICAL, SAID NOTHING WAS WRONG, BUT SHE WAS GOING TO SCHEDULE A ULTRA-SOUND AGAIN TO MAKE SURE.
- 8) I WAITED TWO MONTHS AND ON MAY 10, 2006 I WROTE A LETTER AND SENT A SICK CALL SLIP IN ASKING ABOUT THE ULTRA SOUND DR. TADEO HAD ORDERED.
- 9) ON MAY 23, 2006 I WAS SEEN BY DOCTOR DOROSIER WHO EXAMINED MY RIGHT TESTICAL AND CHECKED MY PROSTATE BECAUSE OF URINARY PROBLEMS. SHE PUT ME ON ANTI-BIOTICS FOR TWO WEEKS AND SHE CHECKED MY FILE AND TOLD ME DOCTOR TADEO NEVER ORDERED A ULTRA SOUND. DR. DOROSIER THEN SAID SHE WOULD CALL ME BACK FOR A CHECK UP IN TWO WEEKS. THAT NEVER HAPPENED. SO I FILED ANOTHER SICK CALL FOR A SHOULDER INJURY AND WAS SEEN ON JUNE 26, 2006. I ALSO ASKED ABOUT ANOTHER ULTRA-SOUND BECAUSE MY RIGHT TESTICAL IS HURTING BAD. HER REPLY WAS I ALREADY EXAMINED YOU AND I DON'T SEE NOTHING THAT IS WRONG.

- 10) On Sept. 30, 2006 I wrote another medical grievance concerning a ultra-sound and continues pain in my right testical. On Oct. 9, 2006 a MR Scott Alton came to my housing unit and verbally assaulted me by saying it's normal for your nuts to hurt every now and again, and to stop writing sick calls and medical grievances. I replied, I would not, until I get better help other than Motrin. He left very angry.
- 11) I was examined again on Oct. 13, 2006 by DR Conbley and he told me I had a mass on my right testical. Then he referred me to the Urologic Surgical Associates of Delaware. Where on Nov. 16, 2006 I was sent to see Francis J. Schanive M.D. then he found a mass on right testical and ordered a ultra-sound. He said when the results came back he would bring me back for a consult to discuss further treatment options. He then told me there's a chance I could lose the testical depending on how bad the damage was.
- 12) On Dec 18, 2006 I finally had a second ultra-sound done. The technician who performed the ultra-sound checked both testicals and informed me I had a mass on both testicals.

- 13) ON JAN. 7, 2007 I WROTE A SICK CALL TELLING MEDICAL I WAS IN PAIN AND I WANTED TO READ THE RESULTS OF THE ULTRA-SOUND.
- 14) ON JAN 11, 2007 I WAS CALLED TO A ^{MEDICAL} GRIEVANCE HEARING THAT I FILED ON SEPT. 30, 2006. AT THE HEARING THE WOMAN IN THERE SAID ALL THEY COULD DO WAS GIVE ME MORE TYLENOL AND BE SEEN BY ANOTHER PRISON DOCTOR. I INSISTED THAT THEY SEND THE RESULTS BACK TO THE UROLOGIST THAT I SAW ON NOV. 16, 2006. AFTER THE WOMAN IN THERE SEEN I WAS NOT GOING TO SIGN OFF ON THE MEDICAL GRIEVANCE, THEY SAID OK WE'LL SEND YOU BACK TO THE UROLOGIST. I DIDN'T BELIEVE THEM BECAUSE OF EVERYTHING THAT WAS GOING ON OVER THE YEARS SO I APPEALED THE HEARING.
- 15) ON MARCH 9, 2007 I WAS SEEN BY PRISON DOCTOR SMITH AND I ASKED HIM ABOUT MY SITUATION WITH THE UROLOGIST? HE LOOKED IN MY FILE AND TOLD ME NOT TO WORRY, THAT HE WOULD SCHEDULE ANOTHER ULTRA SOUND. CAN YOU BELIEVE THAT!
- 16) ON MARCH 11, 2007 I WROTE STEPHANIE MOWBRAY, SHE DOES THE SCHEDULING FOR THE OUT-SIDE DOCTORS. I TOLD HER ABOUT DR. SMITH'S COMMENT, AND ASKED WHY IT WAS TAKING SO LONG TO SEE THE UROLOGIST AGAIN?

- 17) ON MAR. 24, 2007 I WROTE STEPHANIE MOWBRAY AGAIN.
- 18) ON APRIL 19, 2007 I WROTE SGT. MOODY, THE WOMAN WHO HANDLES THE GRIEVANCES. I ALSO WROTE THE WARDEN - Raphael Williams. WHO ADVISED ME THAT THE DIRECTOR OF THE HEALTH CARE SERVICES MR Jim Welch WAS GOING TO REVIEW MY CHART AND TAKE APPROPRIATE ACTION.
- 19) ON APRIL 19, 2007 I ALSO FILED ANOTHER SICK CALL FOR MORE Tylenol FOR PAIN IN RIGHT TESTICAL.
- 20) ON APRIL 25, 2007 I RECEIVED A LETTER FROM THE BUREAU CHIEF RICHARD KEARNEY STATING THAT THEY UPHOLD MY GRIEVANCE APPEAL REQUEST. THANK GOD!
- 21) FROM APRIL 28, 2007 I WROTE NUMEROUS LETTERS TO MR Jim Welch, STEPHANIE MOWBRAY, MR CHRIS Williams (HEALTH SERVICE ADMINISTRATOR) AND SGT MOODY I WAS IGNORED BY EVERY ONE.
- 22) I DID NOT WANT TO DO THIS, BUT ON AUGUST 13, 2007 I FILED A 1983 § LAW SUIT FORM IN DISTRICT COURT.
- 23) ON SEPT 11, 2007 I WAS TRANSFERRED BACK TO THE DELAWARE CORRECTIONAL CENTER AND PLACED IN LOCK UP WITH NO WRITE UPS OR ANY PAPER WORK.

- 24) From SEPT 11, 2007 TO NOV 25, 2007 I filed THREE SICK CALLS AND A MEDICAL GRIEVANCE. I WAS NEVER SEEN FOR ANY OF THEM.
- 25) On DEC 20, 2007 I WAS CALLED TO SICK CALL BY DR. DOROSIER. I WAS EXAMINED AGAIN AND SHE STATED IT FELT LIKE FLUID IN MY SCROTUM. She mentioned something ABOUT ANOTHER ULTRA SOUND AND SAID SHE WOULD CALL ME BACK IN 6 WEEKS.
- 26) PLAINTIFF IS SUFFERING IRREPARABLE HARM IN THE FORM OF CONTINUED PHYSICAL AND MENTAL PAIN AND SUFFERING, AND AN INCREASING RISK THAT I MAY LOSE ONE OR BOTH TESTICALS DEPENDING ON THE DAMAGE. I'VE BEEN COMPLAINING AND SUFFERING FOR OVER THREE AND A HALF YEARS, SINCE, MAY OF 2004.
- 27) FOR THE REASONS SET FORTH IN THE MEMORANDUM OF LAW FILED WITH THIS MOTION, THE PLAINTIFF IS ENTITLED TO A TEMPORARY RESTRAINING ORDER REQUIRING THE DEFENDANTS TO ARRANGE FOR AN OPERATION/EXAMINATION, AND A PLAN OF TREATMENT BY A QUALIFIED SPECIALIST (Urologist, FRANCIS J. SCHANNE M.D.) AND TO A PRELIMINARY INJUNCTION REQUIRING THE DEFENDENTS TO CARRY OUT THAT PLAN OF TREATMENT. PLEASE!

28) FOR THE FOREGOING REASONS, THE COURT SHOULD GRANT THE PLAINTIFF'S MOTION IN ALL RESPECTS.

PURSUANT TO 28 U.S.C. 1746, I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Adam Wenzke

[NAME:]

JANUARY 1, 2008

[DATE:]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE SERVED UPON ALL PERSONS LISTED BELOW A TRUE AND CORRECT COPY OF THE DECLARATION IN SUPPORT OF PLAINTIFF'S MOTION FOR A TRO AND A PRELIMINARY INJUNCTION, IN THE ABOVE CAPTIONED MATTER THIS DATE BY REGULAR MAIL.

DEPARTMENT OF JUSTICE
CARVEL STATE OFFICE *Building*
820 N. FRENCH ST.
Wilmington, DE 19801

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
844 N. KING ST., LOCK BOX 18
Wilmington, DE 19801-3570

JAN. 1, 2008

DATE:

Adam T. Wengke

NAME:

ADAM T. WENZKE

PLAINTIFF,

v.

CIVIL ACTION No. 07-504-***

CORRECTIONAL MEDICAL
SYSTEMS, DR. TADEO, DR.
DOROSIER, MR. ALTON, MR.
JIM WELCH, DR. SMITH,
BETTY BRADLEY, NECHELLE D.
BUTCHER, AND STEPHANIE MOWBRAY

DEFENDANTS

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ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

UPON THE SUPPORTING AFFIDAVIT OF THE PLAINTIFF
AND THE ACCOMPANYING MEMORANDUM OF LAW, IT IS

ORDERED THAT DEFENDANTS C.M.S., DR. TADEO
DR. DOROSIER, MR. ALTON, MR. JIM WELCH, DR. SMITH, BETTY
BRADLEY, NECHELLE D. BUTCHER, AND STEPHANIE MOWBRAY
SHOW CAUSE IN Room _____ OF THE UNITED STATES COURT
HOUSE, 844 KING STREET, WILMINGTON, DE 19801, ON THE
_____ DAY OF _____, 2008, AT _____ O'CLOCK,
WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE PURSUANT

TO RULE 65 (a), FED. R. CIV. P., ENJOINING THE SAID DEFENDANTS, THEIR SUCCESSORS IN OFFICE, AGENTS AND EMPLOYEES AND ALL OTHER PERSONS ACTING IN CONCERN AND PARTICIPATION WITH THEM, TO PROVIDE A MEDICALLY APPROPRIATE COURSE OF ACTION TO SURGICALLY REMOVE TWO CYSTS ON PLAINTIFFS TESTICALS, WHICH HAVE BEEN CAUSING SEVER PAIN SINCE MAY OF 2004.

IT IS FURTHER ORDERED THAT EFFECTIVE IMMEDIATELY, AND PENDING THE HEARING AND DETERMINATION OF THIS ORDER TO SHOW CAUSE, DEFENDANTS C.M.S., DR. TADEO, DR. DOROSIER, MR ALTON, MR JIM WELCH, DR. SMITH, BETTY BRADLEY, NECHELLE D. BUTCHER, AND STEPHANIE MOWBRAY SHALL ARRANGE FOR THE PLAINTIFF TO BE SENT BACK TO THE UROLOGIC SURGICAL ASSOCIATES OF DELAWARE TO SEE FRANCIS J. SCHANNE, M.D. TO DISCUSS THE PRIOR ULTRA-SOUND RESULTS AND THE OPTIONS OF SURGERY OR ANOTHER MEANS OF TREATMENT BESIDES ASPIRIN TWICE A DAY.

IT IS FURTHER ORDERED THAT THIS ORDER TO SHOW CAUSE, AND ALL OTHER PAPERS ATTACHED TO THIS APPLICATION, SHALL BE SERVED ON DEFENDANTS C.M.S., DR TADEO, DR DOROSIER, MR ALTON, MR JIM WELCH, DR. SMITH, BETTY BRADLEY NECHELLE D. BUTCHER, AND STEPHANIE Mowbray by _____, 2008, AND THE UNITED STATES MARSHALS

SERVICE IS HEREBY DIRECTED TO EFPECTUATE SUCH SERVICE.

U.S. DISTRICT JUDGE

DATED